IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3334 of 1993

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRI.SHEIKH MOHAMMED SAKIL JANMOHAMMED

Versus

THE MUNICIPAL COMMISSIONER
AHNEDABAD MUNICIPAL CORPORATION

Appearance:
1. Special Civil Application No. 3334 of 1993
MR MB GANDHI with VB GHARANIYA for Petitioner
MR DEEPAK RAVAL for MR ANAND for Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date of decision: 06/10/2004

ORAL JUDGEMENT

This petition has been preferred by the workman against the judgment and award dated 31st March, 1992 passed by the learned Labour Judge, Ahmedabad in Reference [LCA] No. 742 of 1985 in so far as the backwages have not been awarded to the workman.

The petitioner and four other workmen were engaged by the respondent-Ahmedabad Municipal Corporation [hereinafter referred to as, "the Corporation"] as daily wage labourers. Their service came to be discontinued from 1st January, 1985. Feeling aggrieved, the said workmen raised industrial dispute which was referred to the Labour Court, Ahmedabad and registered as above. Pending the reference, two of the workmen secured employment elsewhere and did not press the claim made before the Labour Court. With respect to the remaining three workmen, the Court held that the termination of their service was in contravention of section 25-F and 25G of the Industrial Disputes Act, 1947 [hereinafter referred to as, "the Act"]. The Court, therefore, ordered reinstatement of the said workmen with the benefit of continuity in service. As to the backwages, the Court held that neither of the said workmen was a permanent employee of the Corporation; as they had not completed 900 days' service they were not entitled to be absorbed in the service of the Corporation; and that the Corporation was a Local Self Government. Considering the above facts and the financial condition of the Corporation, the Court did not award backwages. Feeling aggrieved, one of the said workmen has preferred the present petition.

Learned advocate Mr. Gandhi has submitted that the termination of the service of the petitioner was held to be illegal. The award for backwages should follow as a matter of course. He has pointed out that the petitioner did give evidence before the Labour Court. The petitioner gave evidence that since termination of service by the Corporation, the petitioner had not been able to secure any other employment. Mr. Gandhi has, therefore, submitted that the Court ought to have awarded backwages to the petitioner. In support thereof, he has relied upon the judgment of this Court in the matter of Veterinary Officer & Anr. vs. Rajendrasinh R.Jhala {39 (1) GLR 110}. In the said matter, Court found that the employee had been appointed against the existing vacancy to a post for which he was fully qualified and he had discharged the regular duties of the post. Discharge of the employee from service without following due procedure was held to be bad. The Court upheld the award for backwages.

In the instant case, it was not even the case of the workmen that they were appointed against the existing vacancy. Indisputably, the workmen were daily wage labourers. It was not established before the Labour Court that the procedure envisaged under Section 25-G was not followed. In my view, the Labour Court has given cogent reasons why the workmen should not be allowed the backwages. No interference, therefore, is warranted. However, as the petitioner was not paid the retrenchment compensation as is envisaged by Section 25-F of the Act, the ends of justice shall be met if the petitioner is paid the amount of retrenchment compensation as was payable on the date of his retrenchment from service with interest till the date. It is, therefore, directed that the respondent Corporation shall workout the retrenchment compensation as was payable to the petitioner on his retrenchment from service on 1st January, 1985. Such amount of retrenchment compensation shall be paid to the petitioner with interest @ 6% per annum from 1st January, 1985 till the date of payment. The payment shall be made within two months from today. The petition is allowed to the aforesaid extent. Rule is made absolute with cost.

{Miss R.M Doshit, J.}

Prakash*